

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
New River Valley Radio Partners, LLC	)	File Number EB-03-NF-020
Licensee of WFNR Blacksburg, Virginia	)	
And Owner of	)	NAL/Acct. No. 200332640006
Antenna Structures 1016736, 1016737 & 1016738	)	
In Christiansburg, Virginia	)	FRN 7170764
Reston, Virginia	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: July 7, 2003

By the Enforcement Bureau, Norfolk Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find New River Valley Radio Partners, LLC (“NRVRP”), licensee of AM station WFNR, Blacksburg, Virginia and owner of WFNR’s antenna structures, 1016736, 1016737 and 1016738 in Christiansburg, Virginia, apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000) for willful and repeated violation of Sections 11.35(a), 17.50 and 73.49 of the Commission’s Rules (“Rules”).<sup>1</sup> Specifically, we find NRVRP apparently liable for failing to maintain the operational readiness of its EAS equipment, for failing to maintain good visibility of its antenna structures and for failing to maintain effective fencing around its energized AM antenna towers.

**II. BACKGROUND**

2. NRVRP is the licensee of WFNR, Blacksburg, Virginia. The WFNR license authorizes broadcasts with 10.5 watts on 0.710 MHz only during the day from a three-tower array in Christiansburg, Virginia.

3. NRVRP is also the owner of the WFNR three-tower array with antenna structure registration numbers of 1016736, 1016737 and 1016738. While the FCC Antenna-Structure Registration database listed Travis Broadcasting Corporation as the owner of the WFNR three-tower-array, an attorney for Travis Broadcasting Corporation and the WFNR Manager, who is also a partial owner of WFNR, said ownership belonged to NRVRP. The three structures are 104.6 meters above ground with a prescription for painting and lighting per FCC paragraphs 1, 3, 12 and 21.

4. On March 24, 2003, an agent of the Commission’s Norfolk Field Office (“Norfolk Office”) noted that the WFNR antenna structures were poorly visible from less than a quarter mile away. On March 27, 2003, the agent noted that the three structures contained areas of chipped paint that exposed the

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<sup>1</sup> 47 C.F.R. §§ 11.35(a), 17.50 and 73.49.

metal of the structures and that faded paint failed to match colors specified in section 17.23 of the Rules.<sup>2</sup> After interviewing persons that were involved with the operations of WFNR, the Norfolk agent learned that by one account, at least ten months had passed between the time the WFNR management was informed of the need for re-painting the towers and the time of the Norfolk agent's observation, while by another account, twenty-two months had passed.

5. On March 27, 2003, after WFNR's personnel were unable to locate logs of recent EAS tests or of recent EAS message receipts, the Norfolk agent asked operators to conduct EAS tests. On March 27, and on March 28, 2003, WFNR failed to transmit EAS tests when operators tried to conduct tests; and in both instances, operators said that WFNR had been having problems with the EAS equipment. After speaking with WFNR's operators, and after review of WFNR's station logs, the Norfolk agent noted that for four months, WFNR failed to receive and re-transmit monthly EAS tests and it failed to receive EAS messages. He also noted that for 15 weeks, WFNR failed to conduct weekly EAS tests and it failed to receive weekly EAS tests. In addition, WFNR's logs were without notation of failed EAS test attempts or of problems with EAS equipment. On April 29, 2003, WFNR's consulting engineer told the Norfolk agent that a bad cold-solder joint had prevented the successful operation of WFNR's EAS equipment, and that he had been asked by WFNR to repair the EAS equipment in February 2003 but his workload had precluded the repairs at that time.

6. On March 27, 2003, the Norfolk agent observed WFNR in operation with unlocked fence gates around its eastern (1016736) and western (1016738) antenna towers. Both the station manager and a station operator admitted knowing that effective fencing was required, but they said that they did not know who removed the locks or of how long the two fence gates were without locks. The operator admitted that at his last scheduled weekly check of the transmitter site (on or before March 22, 2003), he failed to check tower fencing.

### III. DISCUSSION

7. Section 11.35(a) of the Rules requires broadcast stations to ensure that its EAS equipment is installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. On at least March 27, and on March 28, 2003, WFNR's EAS equipment was inoperable. WFNR logs for the period November 19, 2002 to March 27, 2003, showed no monthly EAS tests received or sent; no EAS messages received; for 15 weeks during that period, no weekly EAS tests; no explanation of failure to receive such tests and activations; and no entries showing EAS equipment had been removed from service for repair.<sup>3</sup>

8. Section 17.50 requires tower owners to clean or repaint their antenna structures as often as necessary to maintain good visibility. The WFNR antenna structure registrations prescribed painting, but on March 24 and 27, 2003, the structures' paint was chipped and faded, and contrasting color bands could not be seen clearly from less than one-quarter mile away, resulting in poor visibility of the structures'

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<sup>2</sup> 47 C.F.R. § 17.23.

<sup>3</sup> EAS tests and activations, failure to receive such tests and activations, and EAS equipment malfunctions must be recorded in the station log. *See* 47 C.F.R. §§ 11.35(a)-(b), 11.54(b)(12), 11.55(c)(7) and 11.61(b).

markings. According to persons involved with the operations of WFNR, the structures' markings had exhibited poor visibility for at least ten months prior.

9. Section 73.49 requires licensees to provide effective locked fencing or other enclosure around antenna towers with radio frequency potential at their bases. On March 27, 2003, while WFNR was in operation, two of its three antenna-tower base fences were without gate locks.

10. Based on the evidence before us, we find NRVPR willfully<sup>4</sup> and repeatedly<sup>5</sup> violated Sections 11.35(a), 17.50 and 73.49 of the Rules. Specifically, we find NRVPR apparently liable for failing to maintain the operational readiness of its EAS equipment, for failing to maintain good visibility of its antenna structures and for failing to maintain effective locked fencing around all of its energized AM antenna towers.

11. Pursuant to Section 1.80(b)(4) of the Rules,<sup>6</sup> the base forfeiture amount for failing to maintain the operational readiness of its EAS equipment is \$8,000; the amount for failing to maintain good visibility of its antenna structures is \$10,000, and the amount for failing to maintain effective fencing around its energized AM antenna towers is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>7</sup> Considering the entire record and applying the factors listed above, this case warrants a \$25,000 forfeiture.

#### IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>8</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>9</sup> NRVPR, is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty-five thousand dollars (\$25,000) for willful and repeated violation of Sections 11.35(a), 17.50 and 73.49 of the Rules for failing to maintain the operational readiness of its EAS equipment, for failing to maintain good visibility of its antenna structures and for failing to maintain

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<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . .” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>5</sup> The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

<sup>6</sup> 47 C.F.R. § 1.80(b)(4).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

effective fencing around its energized AM antenna towers.

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, NRVRP SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>10</sup>

15. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

18. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to New River Valley Radio Partners, LLC; 1930 Isaac Newton Square, Suite 207; Reston, VA, 22090.

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<sup>10</sup> See 47 C.F.R. § 1.1914.

**FEDERAL COMMUNICATIONS COMMISSION**

Joseph P. Husnay  
Resident Agent, Norfolk Office, Enforcement Bureau

Attachment

New River Valley Radio Partners LLC  
1930 Isaac Newton Square  
Suite 207  
Reston VA 22090

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